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EXAMINER	
VO, THANH DUC	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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In re Application of: Vihmalo, et al.
Application No. 10/656,888
Filed: September 5, 2003
For: MEMORY WEAR LEVELING

DECISION ON PETITION TO WITHDRAW THE FINALITY OF AN OFFICE ACTION

This paper provides the decision on the petition filed December 10, 2007 under 37 C.F.R. § 1.181 and M.P.E.P. § 706.07 to withdraw the finality of the Office action, mailed October 31, 2007.

Petitioner has, in the instant petition, has put forth opinions, and conclusions, without laying forth his reasoning based on the facts of the prosecution history of the case at issue. However, based on a review of the prosecution history, the final office action is found to be premature, and hence the petition is being granted.

The Petition is **GRANTED.**

Applicable Prosecution History

August 10, 2006	Examiner issued a final Office action. In the final Office action the examiner rejected all the independent claims (claims 1, 20, 32, and 34) under 35 U.S.C. §103(a) as being unpatentable over Chang in view of Ban (US patent 6,732,221). Ban was introduced in response applicant's amendments.
October 23, 2006	Applicant filed a response to the final rejection, including an RCE, and amendment to the independent claims. The amendment included canceling the claim 34, and amending independent claims 1, 20, and 32 to include the limitation that said copying or relocating the data occurs "every time said at least one triggering signal is detected".

January 3, 2007	Examiner mailed a non-final action, citing the same sections of Chang as teaching the new limitation. The term "every time" in amended claims 1, 20, and 32 is simply demonstrating that whenever the memory detects a triggering signal, the data is copied or relocated from one block of memory to another.
February 5, 2007	Applicant filed a response to the non-final rejection mailed January 3, 2007, stating a) incompatibility of references, and b) combining Ban with Chang would produce a random process, and would not meet the limitation of copying or relocating the data "**every time** said at least one triggering signal is detected". No amendments to claims were presented with this response.
May 7, 2007	Examiner mailed a Final Rejection, repeating the rejection from January 3, 2007, and the response to arguments basically repeated the arguments from January 3, 2007.
June 7, 2007	Applicant filed a response to the final rejection mailed May 7, 2007, including an RCE, and amendment to the independent claims. The amendment included amending independent claims 1, 20, and 32 to include the limitation that said triggering signal "is not intended for memory wear leveling". Applicant further argues that the references do not teach the memory wear leveling being performed **every time** the triggering signal is detected.
July 12, 2007	Examiner mailed a non-final action, using the same references, Chang and Ban.
August 17, 2007	Applicant filed a response to the non-final rejection mailed July 12, 2007, including amendments to the independent claims, and repeating the arguments from June 7, 2007.
October 31, 2007	Examiner mailed a Final Rejection, repeating the art rejection from July 12, 2007, and adding a rejection under 35 USC 112 First paragraph.
November 20, 2007	Applicant had an interview with Examiner and SPE, in which the Ban reference was discussed vis-à-vis claim 1 of instant application.
December 10, 2007	Instant Petition filed, requesting withdrawal of the finality of the office action mailed on October 31, 2007, and requesting entry of the amendment filed on December 10, 2007.

RELIEF REQUESTED

The Applicant respectfully that
1. The finality of the office action mailed on October 31, 2007 be withdrawn.
2. The amendment filed on December 10, 2007 be entered.

RULES AND PROCEDURE

MPEP 706.07 sets forth that the examiner should never lose sight of the fact that in every case the applicant is entitled to a fair and full hearing, and that a clear issue between applicant and examiner should be developed, if possible, before appeal; and that in making the final rejection, they [the grounds of rejection] must be clearly developed to such an extent that applicant may readily judge the advisability of appeal unless a single previous Office action contains a complete statement supporting the rejection.

MPEP 707.07(f) [R-3] Answer All Material Traversed, states in part:
In order to provide a complete application file history and to enhance the clarity of the prosecution history record, an examiner must provide clear explanations of all actions taken by the examiner during prosecution of an application.....
Where the applicant traverses any rejection, the examiner should, if he or she repeats the rejection, take note of the applicant's argument and answer the substance of it.

DECISION

MPEP states that " clear issue between applicant and examiner should be developed, if possible, before appeal". In the instant application, in a review of the prosecution history, it is clear that issues for appeal have not been clearly developed. In some instances the responses by examiner to applicant's arguments did not address the substance of some of the arguments completely as set forth by MPEP 707.07(f). In other instances, applicants were making amendments to claims and provided arguments that confused the issue. Hence, it is found that a clear issue between applicant and examiner has not been developed, and hence the final rejection dated October 31, 2007 has been found to be premature.

For the above stated reasons, the petition is **GRANTED**. The finality of Office action mailed on October 31, 2007 is hereby withdrawn and the office action is changed to non-final Office action. Applicant's response filed on December 10, 2007 will be treated as a response to the non-final Office action, and the amendments filed with the response of December 10, 2007 will be entered, and the case forwarded to examiner for further action.

Jack Harvey, Director
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